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MEMORANDUM

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TO: Docket Control  
Arizona Corporation Commission

2006 JUN -2 P 1:27

FROM: Ernest G. Johnson  
Director  
Utilities Division

AZ CORP COMMISSION  
DOCUMENT CONTROL

Date: June 2, 2006

RE: STAFF'S RESPONSE TO TACNA WATER MANAGEMENT COMPANY'S  
SETTLEMENT AGREEMENT WITH MOHAWK UTILITY COMPANY, INC.  
(DOCKET NO. W-01344A-04-0815)

**Introduction**

On November 10, 2004, Tacna Water Company ("Tacna") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide water service in portions of Yuma County, Arizona. On September 9, 2005, Tacna filed an amendment to the applications to include a revised legal description.

On October 11, 2005, the Company filed a Notice of name change from Tacna Water Company to Tacna Water Management Company.

On December 1, 2005, Staff filed its Staff Report, recommending approval with conditions.

On December 21, 2005, Mohawk Utility Company ("Mohawk") filed a Motion to Intervene in this matter, which was granted on January 5, 2006.

On January 24, 2006, Mohawk filed an application for extension of its CC&N in Docket No. W-02341A-06-0040 requesting that its service territory be extended to include an area overlapping Tacna's requested area.

On February 21, 2006, a Hearing was held on Tacna's application.

On April 7, 2006, a Procedural Order was issued setting a Procedural Conference for April 19, 2006, and ordering, among other things, the parties to discuss an appropriate means of clarifying the record regarding the location of Mohawk's facilities and customers in relation to the service territory extension requested by Tacna and encouraged the parties to meet and communicate prior to the Procedural Conference to attempt to resolve disputed issues.

Arizona Corporation Commission

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On April 19, 2006, a Procedural Conference was held. At the Procedural Conference, The parties indicated that a settlement of the disputed issues had been reached, and that the parties planned to file an executed Settlement Agreement by May 19, 2006.

On May 16, 2006, Tacna filed in this docket, a copy of the executed Settlement Agreement by the parties.

On May 17, 2006, by Procedural Order, Staff was ordered to review the Settlement Agreement, including the amended legal description, and file in this docket, a response on or by June 2, 2006.

### **Background**

The overlapping requested service territory in dispute includes portions of Section 26, 27, 34, and 35, all in Township 8 South, Range 17 West. (See the map attached to the April 21, 2006 Notice of Filing that was filed in the docket by Staff.)

According to the map filed on April 21, 2006, Mohawk's water plant is located in Section 27, about one mile from its existing CC&N area. Also, Mohawk currently serves (outside its CC&N area) six (6) customers in Section 27, one (1) customer in Section 28, and nine (9) customers south of the Interstate 8 freeway, specifically, seven (7) customers in Section 34 and two (2) customers in Section 35. The Commission in Decision No. 63260, issued on December 14, 2000, in Docket No. W-02341A-97-0740, authorized Mohawk to continue to serve its existing customers residing outside its certificated area.

As of May 29, 2006, Mohawk's application for extension of its CC&N remains insufficient.

### **Analysis**

#### **Settlement Agreement**

On May 16, 2006, Tacna and Mohawk filed a Settlement Agreement that describes a resolution of the dispute between the parties with respect to which company is to serve the area of Yuma County, Arizona described in their Settlement Agreement. The Settlement Agreement provides that Tacna deletes the South ½ of the Southwest ¼ of Section 27, T8S, R17W, from its application, while Mohawk deletes all and any area overlapping Tacna's amended requested service area from its application. Mohawk is to keep its existing service area, the South ½ of the Southeast ¼ of Section 28 ("Carl Conley parcel"), and the Northwest ¼ of Section 26 ("Jeffrey H. Jennings parcel"), all in T8S, R17W.

Regarding Mohawk's existing customers outside the CC&N, Mohawk agrees to comply with the Commission order and to continue to provide service to the existing customers outside of its CC&N which includes all existing customers in Tacna's amended CC&N requested area.

Tacna agrees to provide service within two years to all of Mohawk's existing customers within Tacna's amended CC&N requested area. Both parties agree that for the payment of \$500.00 by Tacna, Mohawk will quit claim any interest it holds in the water line (or water lines) underneath Interstate 8 and that the parties would cooperate to insure that service to existing customers is not interrupted.

The Settlement Agreement represents an agreement reached by two regulated public service corporations in an attempt to resolve the issues in dispute between them. Staff believes that this Settlement Agreement is not binding on the Commission, but is one consideration that would be taken into account in their respective CC&N extension proceedings. Although Staff commends the efforts of the parties to settle their differences, Staff does not recommend that any order that addresses the CC&N extension specifically approve the agreement between the parties. Each application for CC&N (including extensions) is considered based on its merits and the public interest, and not based solely on agreement of companies that have decided to carve out future service territories.

#### Legal Description

With regards to the amended legal description, Staff has evaluated the legal descriptions included in the Settlement Agreement between Tacna and Mohawk. Staff found that the legal description for Tacna referred to as Exhibit B in the Settlement Agreement is correct, while the legal description for Mohawk does not agree with the map provided as Exhibit C. The area deleted by Tacna (the South ½ of the Southwest ¼ of Section 27, T8S, R17W) is not reflected in the written legal description for Mohawk, but is shown on Exhibit C. See Attachment A for a copy of the map which reflects only the written legal descriptions that were included in the Settlement Agreement. Staff believes that the parties inadvertently failed to include or add the area deleted by Tacna into Mohawk's legal description. The area, the South ½ of the Southwest ¼ of Section 27, T8S, R17W, is vital to Mohawk. Mohawk not only has its water plant in that location, it also has existing customers there.

#### Further Proceedings

As noted in Staff's March 21, 2006 Legal Memorandum on the issue of two potentially competing applications to service the same area, Mohawk was an intervenor in this proceeding and participated in the hearing. The parties have now amicably resolved their differences and have filed their Settlement Agreement in the docket. In consideration of the evidence gathered so far, Staff believes that further proceedings are not required in this docket.

#### **Recommendations**

Staff recommends the Commission approve Tacna's application for extension of its existing CC&N to provide water service in Yuma County subject to compliance with the following additional conditions:

1. That the area deleted by Tacna (the South ½ of the Southwest ¼ of Section 27, T8S, R17W) be reflected in the written legal description for Tacna's CC&N extension area;
2. That Tacna be required to provide water service to all of Mohawk's existing customers in Section 34 and 35, T8S, R17W, by May 12, 2008; and
3. That Mohawk be required to continue to provide water service to its existing customers in Section 34 and 35, T8S, R17W, until Tacna takes over.
4. That Tacna and Mohawk be required to fully cooperate to insure that service to the existing customers in Section 34 and 35, T8S, R17W, is not interrupted.

EGJ:BNC:tdp

Originator: Blessing Chukwu

Service List for: Tacna Water Management Company  
Docket No. W-01344A-04-0815

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Tacna Water Management Company  
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Yuma, Arizona 85364

Mr. John Weil  
WEIL & WEIL  
1600 South Fourth Avenue, Suite C  
Yuma, Arizona 85364

Robert Chris Rokwell  
Mohawk Utility Company  
36140 Antelope Drive  
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**MEMORANDUM**

TO: Blessing Chukwu  
Executive Consultant III  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: May 22, 2006

RE: **TACNA WATER COMPANY (DOCKET NO. W-01344A-04-0815)**  
**SETTLEMENT AGREEMENT**

I have evaluated the legal descriptions filed in the settlement agreement between Tacna Water Management Company and Mohawk Utility Company. The legal description for Tacna referred to as Exhibit B is correct. The written legal description for Mohawk does not agree with the map provided as Exhibit C. The area deleted by Tacna from their original application (the South 1/2 of the Southwest 1/4 of Section 27, T8S, R17W) is not reflected in the written legal for Mohawk, but is shown on Exhibit C. I spoke to Mr. Chris Rockwell (Mohawk Utility) today and he said he would take a look at it. (I will follow up with him in a couple of days.) For our purposes, the written legal description is what is used – not any maps that may be included.

Attached is a copy of the map for your files, which reflects only the written legal description.

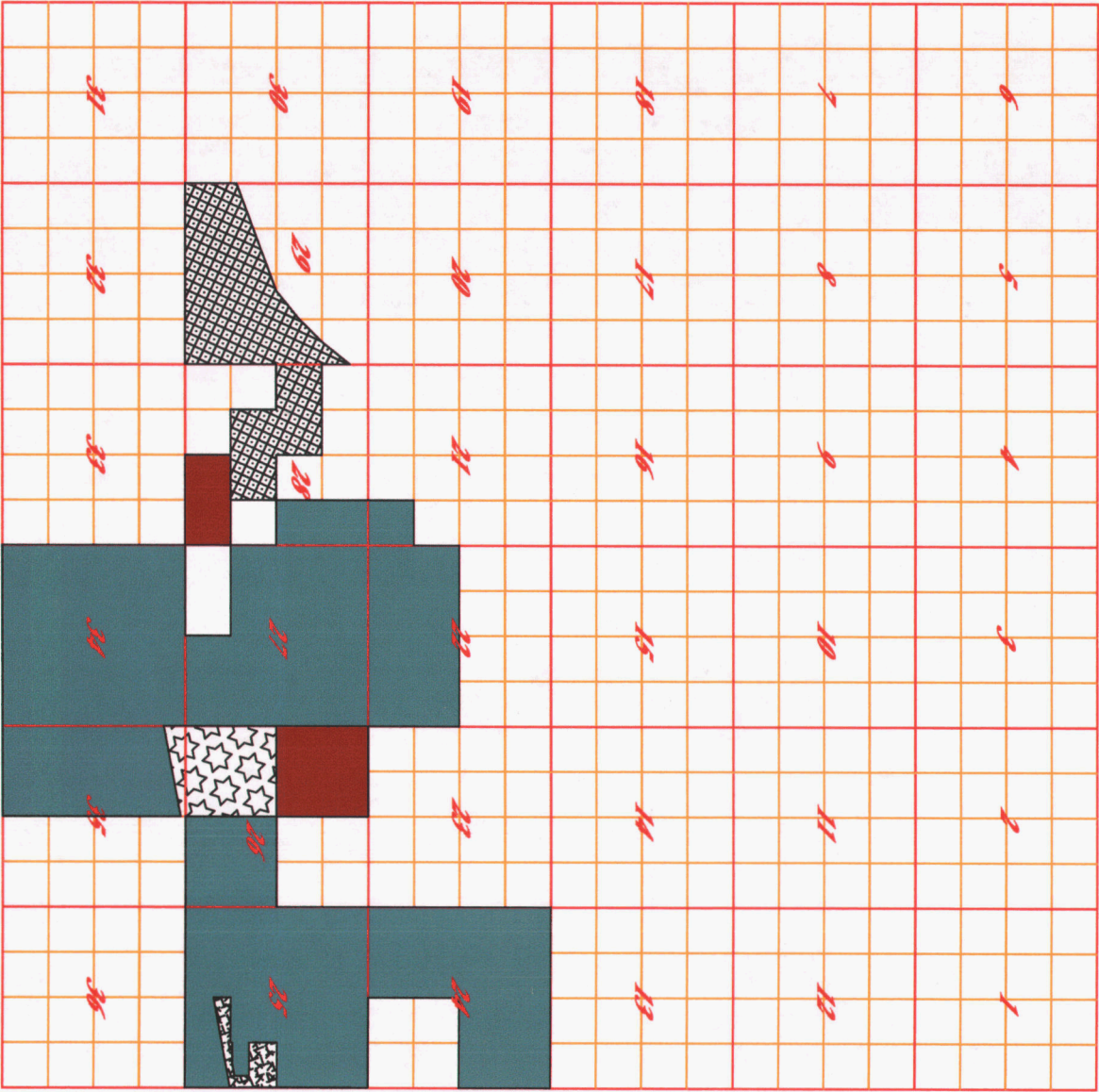
:bsw

Attachment






cc: File

# COUNTY: Yuma

## RANGE 17 West



## TOWNSHIP 8 South

-  W-2005 (1)  
Antelope Water Company
-  W-2341 (1)  
Mohawk Utility Company
-  W-1344 (2)  
Tacna Water Company
-  Tacna Water Company  
Docket No. W-01344A-04-0815  
Application for Extension - Settlement
-  Mohawk Utility Company  
Docket No. W-02341A-06-0040  
Application for Extension - Settlement